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Supreme Court, U.S.
FILED
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No. 93-1560

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

MAURICE R. HUFF
NANCY R. HUFF,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEAL

REPLY TO OPPOSITION

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Instead of responding on the merits of Huffs' petition, respondent merely asserts that it was filed out of time because of an alleged untimely petition for rehearing in the appellate court, and because there is no "indication that the court of appeals had considered it on its merits." (Opp. 1). Petitioners contend there is simply no merit to the respondent's argument.

First of all, as this Court is probably well aware, rehearing petitions in appellate courts are routinely denied without any indication of consideration on their merits, and usually without any comment whatsoever. Therefore, respondent's apparent inference that rehearing denials must show consideration of the merits is wholly groundless.

Next, the appellate court itself did not consider the rehearing petition untimely since it was not denied on that ground (Pet. App. 37). If in fact it was untimely (and respondent has presented no record to show it was), the appellate court itself would be the court to make such a determination. Again, as this Court is probably well aware, if a petition for rehearing is denied due to untimeliness, the appellate court will state so.

Finally, Rule 26(c) of the Federal Rules of Appellate Procedure (FRAP) provides that when a party is required to act within a prescribed time after a paper is served by mail, 3 days shall be added to that period. FRAP Rule 36 requires the clerk of the appellate court to mail a copy of the opinion to all parties. Therefore, an additional 3 days are added to the 14 day requirement set forth in Rule 40. Consequently, even if respondent's statement was true, the rehearing petition was not untimely.

CONCLUSION

This petition for certiorari is timely, and should not be denied on any issue of timeliness.

Respectfully submitted,

Maurice R. Huff
Nancy R. Huff